

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKT BENCH,

KOLKATA

C.P (IB) No.1908/KB/2019

In the matter of

An application under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of:

Reliance Home Finance Limited having its registered office at 6th Floor, North Wing, Off Western Express Highway, Santacruz (East), Mumbai-400055.

... Financial Creditor

Versus

In the matter of:

Raghav Sarees Private Limited, having its registered office at 391, Block-G, Ground Floor, New Alipore, Kolkata-700053.

...Corporate Debtor

Date of hearing : 05/05/2022

Order Pronounced on :13 /06/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Snehashis Sen, Adv.] For the Financial Creditor
1. Ms. Soma Ray, Adv.] For the Corporate Debtor

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **Reliance Home Finance Limited**, through its authorised signatory Mr. Prashat Burman, vide Board Resolution dated 24.04.2017(Annexure-B) (hereinafter referred to as the Financial Creditor) for initiation of Corporate Insolvency Resolution Process in respect of **Raghav Sarees Private Limited**, having its registered office at 391, Block-G, Ground Floor, New Alipore, Kolkata-700053 (hereinafter referred to as the Corporate Debtor).
3. It is submitted by the Financial Creditor in the petition that the Financial Creditor grants credit facilities to the individual for purchase and acquisition of residential and commercial apartments or spaces, apart from granting credit facilities to diverse promoters and developers for project finance and construction of diverse projects. It is stated that the Financial Creditor is a company of repute in the housing finance sector.
4. It is further submitted that the Corporate Debtor is a company engaged in the business of clothing and apparels and had approached the Financial Creditor in regard to credit facilities to the tune of Rs.1,75,00,000/- and after due deliberation and negotiations between the parties, the Financial Creditor agreed to sanction and disburse credit facilities to the Corporate Debtor provided the Corporate Debtor complied with necessary formalities.
5. It is further stated that the Corporate Debtor agreed that in lieu of grant of credit facilities, a Commercial Property being Module No. 205, 1st Floor, South West Side Standard Design Factory-C/III (SDF) Project Name-

Paridhan Garment Park, Premises No.- 19, PS- Belighata, Ward No. 57, Kolkata 700015, shall be mortgaged in favour of the Financial Creditor .

6. The Financial Creditor perused the viability of the application form submitted by the Corporate Debtor and after valuation of the property, the Financial Creditor sanctioned the credit facilities on the basis of the terms and conditions mentioned in the sanction letter dated 23.05.2017. In terms of the agreement as aforesaid, a loan agreement was executed on 31.05.2017, which contains all the terms and conditions for grant of credit facilities mentioned in the sanction letter dated 23.05.2017.

7. It is further submitted that the Corporate Debtor initially made payments of instalments but on and from 5th August, 2019, it deliberately failed and neglected to pay the agreed sums of instalments as per the sanction letter and loan agreement. The Corporate Debtor failed to pay the agreed amount in respect of the instalments on and from 5th August, 2018 and thereafter not a single instalment has been paid timely or as per the terms and condition of the loan agreement.

8. It is submitted that due to the default committed by the Corporate Debtor, the loan account of the Corporate Debtor became NPA on 8th January, 2019. Thereafter, the Financial Creditor issued a loan recall notice dated 21st January, 2019 claiming a sum of Rs.1,79,21,300/- but despite receipt of such notice, the Corporate Debtor has failed and neglected to clear up the dues of the Financial Creditor. Even, thereafter, the Financial Creditor issued a notice dated 12th February, 2019 under Section 13(2) of the Securitization and Restructuring of Financial Assets and Enforcement of Security Interest Act,2002 claiming a sum of Rs.1,80,75,016/- which was responded to by the Corporate Debtor claiming the notice to be allegedly unsigned and illegal but no defence was put up as to the defaults committed by the Corporate Debtor in payment of the loan. It is submitted that the Financial Creditor took

symbolic possession of the property in terms of section 13(4) of Securitization and Restructuring of Financial Assets and Enforcement of Security Interest Act,2002 read with Rule 8(1)of the Security Interest (Enforcement) Rules, 2002 and was issued to the Corporate Debtor.

9. It is finally submitted by the Financial Creditor that on 18th September, 2019 Rs.2,87,72,816.65 is still due and receivable by the Corporate Debtor to the Financial Creditor and the Corporate Debtor is in default in making such payment towards financial debt.

10. In the reply affidavit filed by the Corporate Debtor through one of its Directors Mr. Narendra Kumar Agarwal, it is submitted that in the application it has been alleged that the date of default is 5th August,2018 but in the statement of accounts relied upon by the Financial Creditor, the alleged default on 5th August, 2018 was made good by the Corporate Debtor by making payment of Rs.2,43,546/- through cheque bearing no. 852629 dated 31st August, 2018.

11. It is submitted that pursuant to sanction of loan facility of Rs.1,75,00,000/- @ 11.25% interest which was repayable by 120 monthly instalments, the Corporate Debtor started repaying the EMIs regularly but in the middle of 2018, the Corporate Debtor has suffered acute financial crunch due to recession in the market, when the Financial Creditor started pressurizing the Corporate Debtor for payment. In spite of a few representations made to the Financial Creditor to allow moratorium till 31st March, 2019 to enable the Corporate Debtor to cope up with the adverse market scenario, but unfortunately the Financial Creditor did not respond to the same. It is submitted that the requests of the Corporate Debtor was bonafide but it was not exceeded to. It is submitted that the Financial Creditor issued a recall letter on 21st January, 2019 demanding a sum of Rs.1,79,21,300/- due and payable on 18/01/2019.

12. It is submitted that Financial Creditor had filed proceedings before the Metropolitan Magistrate 13th Court, Calcutta and the Corporate Debtor received summons from that Court prior to the receipt of the aforesaid recall notice and thereafter the Corporate Debtor received another letter dated 12th February, 2019 issued under Section 13(2) of the SARFAESI Act, 2002. It is submitted that on 2nd April, 2019, a paper publication was made as regards demand notice which according to the Corporate Debtor was illegal and *de hors* the provisions of the SARFAESI Act, 2002.

13. It is submitted that the Financial Creditor issued a subsequent notice dated 15th May, 2019 to the Corporate inter *alia* demanding a sum of Rs.21,85,497/- payable to the Financial Creditor and requesting the Corporate Debtor to clear the outstanding dues immediately. The Corporate Debtor further submits that another legal notice dated 4th June, 2019 was issued by the Financial Creditor, when it was alleged that for repayment of the dues of the Financial Creditor, cheque dt. 25th May, 2019 for a sum of Rs.1,80,75,016/- was issued by the Corporate Debtor, drawn on IDBI Bank, Park Street Branch, Kolkata. Such legal notice was issued under Section 138(B) of the Negotiable Instrument Act, 1881 and the allegations were also false , frivolous and absurd.

14. It is submitted that when the outstanding amount was Rs.21,85,497/- on 15th May,2019, the question of issuing such cheque on 21st May, 2019, for a sum of Rs.1,80,75,016/- could not arise. It is submitted that the Financial Creditor by mis-utilizing the blank cheque handed over to it at the time of sanction of loan facility had made out such a false, frivolous and concocted case upon the Corporate Debtor.

15. It is submitted that since the demand notice dated 12th February,2019 was itself unsigned and not legally enforceable, all action taken including the

issuance of the purported possession notice was illegal and *void ab initio*.

16. It is submitted that the Financial Creditor had given a go-bye to its earlier demand notice dated 12th February, 2019 and issued a subsequent notice on 15th May, 2019.

17. It is submitted that steps taken by the Financial Creditor under Section 13 of the SARFAESI Act,2002 are wrongful and illegal, which has been challenged by the Corporate Debtor in an appeal filed under Section 17 of the SARFAESI Act,2002. It is denied that a sum of Rs.2,87,72,816.65 or any part thereof is due or receivable by the Corporate Debtor to the Financial Creditor or that the Corporate Debtor is in default in making payments towards the financial debt.

18. During the course of arguments, Ld. Counsel for the Financial Creditor has taken us through all the pleadings and documents placed along with the pleadings by the Financial Creditor. He has shown us the sanction letter dated 23rd May, 2017 sanctioning amount of Rs.1,75,00,000/- which would carry a floating rate of interest @ 18% and repayable within 120 months of EMI's of Rs.2,43,546/- only. The Financial Creditor has also shown us a copy of the loan agreement dated 31st May, 2017 and the demand promissory note dated 31st May, 2017 and all other documents to prove the disbursement of the loan.

19. It is submitted by the Financial Creditor that even though the Corporate Debtor has in its reply affidavit affirmed on 30thDecember,2020, denied each and every fact mentioned in the petition but it is all a concocted story and an attempt to circumvent the liabilities of the Corporate Debtor.

20. It is submitted that existence of loan and default in repayment of the loan has been duly admitted by the Corporate Debtor and the same would be

evident from the statements made by the Corporate Debtor at page 8(c) of the reply affidavit, wherein the Corporate Debtor admits that it was unable to repay the loan instalments and had issued letters dated 15th December, 2018 and 24th December, 2018 seeking time to repay the loan amount. Ld. Counsel for the Financial Creditor further submitted that the notice dated 12th February, 2019 issued by the Financial Creditor under Section 13(2) of the SARFAESI Act, 2002 was duly received by the Corporate Debtor and the same was replied to by way of letter dated 12th April, 2019 and in its reply, the Corporate Debtor without getting the fact of default raised technical disputes in connection with the notice under SARFAESI Act, 2002 without any evidence. From the record, we observe that the disputes raised by the Corporate Debtor are nothing but sham and frivolous.

21. The Corporate Debtor has raised issue that the Financial Creditor is itself undergoing resolution process. In this regard, it is submitted by the Financial Creditor that at the time of initiation of the present case, the Corporate Debtor was not under CIRP and hence the Corporate Debtor does not fall within the purview of the provisions of Section 11 of the IBC. In any event, explanation II of Section 11 of the IBC categorically clarifies that nothing in this Section shall prevent the Corporate Debtor, referred to in Clauses (a) to (d) of the said Section from initiating CIRP against another Corporate Debtor. Therefore, it is clear from the statute itself that the fact that the Financial Creditor herein is undergoing resolution process itself, is not a bar to maintain the instant application against the Corporate Debtor.

22. The Financial Creditor has proposed the name of **Mr. Niraj Kumar Agrawal**, to act as an IRP having Registration No. **IBBI/IPA-001/IP-P00949/2017-2018/11569**, who has consented vide his affidavit and Form-2, and submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of

ICAI.

23. In the present proceedings under section 7 of the Code, we have to only satisfy ourselves about the existence of financial debt and that the default has occurred in repayment of the financial debt by the Corporate Debtor and as soon as the Adjudicating Authority is satisfied that the default has occurred, the petition must be admitted. In the present case, the Corporate Debtor was and is unable to show that there was no default and on the contrary, the Corporate Debtor has admitted the default in repayment of loan on its part. It is apparent that the Corporate Debtor is unable to repay the loan amount and has committed default and the present petition is, therefore, deserves to be admitted for CIRP.

24. We, therefore, pass the following orders:-

O R D E R S

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Mr. Niraj Kumar Agrawal, IRP** registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-001/IP-P00949/2017-18/11569**, hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Financial Creditor/Applicant is directed to deposit **Rs 5,00,000/- (Rupees Five Lakh Only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

- xii) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on **02/08/2022** for the filing of the progress report.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 13th day of June, 2022

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